

HONORABLE JUDGE KYMBERLY K. EVANSON
MAGISTRATE JUDGE MICHELLE L. PETERSON

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JENNIFER JAY LEE,
a/k/a Jason Lee Sutton,

Plaintiff,

v.

LESLIE O'CONNOR,

Defendant.

NO. 2:22-cv-01392-KKE-MLP

STIPULATED PROTECTIVE ORDER

PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

"CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: Department of Corrections' surveillance video and photos of

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1 the area where incidents occurred within the prison on May 17, 2022.

2 SCOPE

3 The protections conferred by this agreement cover not only confidential material (as
4 defined above), but also (1) any information copied or extracted from confidential material; (2) all
5 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
6 conversations, or presentations by parties or their counsel that might reveal confidential material.

7 However, the protections conferred by this agreement do not cover information that is in
8 the public domain or becomes part of the public domain through trial or otherwise.

9 ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

10 Basic Principles. A receiving party's attorney may use confidential material that is
11 disclosed or produced by another party or by a non-party in connection with this case only for
12 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
13 disclosed only to the categories of persons and under the conditions described in this agreement.
14 Confidential material must be stored and maintained by a receiving party's attorney at a location
15 and in a secure manner that ensures that access is limited to the persons authorized under this
16 agreement.

17 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
18 court or permitted in writing by the designating party, a receiving party's attorney **MAY NOT**
19 **DISCLOSE CONFIDENTIAL INFORMATION TO THE PLAINTIFF.** A receiving party's
20 attorney may disclose any confidential material only to:

- 21 (a) employees of counsel to whom it is reasonably necessary to disclose the
22 information for this litigation;
- 23 (b) experts and consultants to whom disclosure is reasonably necessary for this
24 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 25 (c) the court, court personnel, and court reporters and their staff;
- 26 (d) during their depositions, non-incarcerated witnesses in the action to whom

disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court’s files.

DESIGNATING PROTECTED MATERIAL

Except as otherwise provided in this agreement or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the

1 designating party must clearly inform the opposing party in its discovery responses or in a cover
2 letter that the materials provided are “CONFIDENTIAL.”

3 Testimony given in deposition or in other pretrial proceedings: the parties and any
4 participating non-parties must identify on the record, during the deposition or other pretrial
5 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
6 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
7 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
8 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
9 at trial, the issue should be addressed during the pre-trial conference.

10 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
11 qualified information or items does not, standing alone, waive the designating party’s right to
12 secure protection under this agreement for such material. Upon timely correction of a designation,
13 the receiving party must make reasonable efforts to ensure that the material is treated in accordance
14 with the provisions of this agreement.

15 PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
16 LITIGATION

17 If a party is served with a subpoena or a court order issued in other litigation that compels
18 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
19 must:

20 promptly notify the designating party in writing and include a copy of the subpoena
21 or court order;

22 promptly notify in writing the party who caused the subpoena or order to issue in
23 the other litigation that some or all of the material covered by the subpoena or order is subject to
24 this agreement. Such notification shall include a copy of this agreement; and

25 cooperate with respect to all reasonable procedures sought to be pursued by the
26 designating party whose confidential material may be affected.

1 UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
5 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
6 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
7 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
8 Bound” that is attached hereto as Exhibit A.

9 INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
14 is not intended to modify whatever procedure may be established in an e-discovery order or
15 agreement that provides for production without prior privilege review. The parties agree to the
16 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party, including all copies, extracts and
20 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

21 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
22 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
23 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
24 product, even if such materials contain confidential material.

25 The confidentiality obligations imposed by this agreement shall remain in effect until a
26 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: March 20, 2024

/s Darryl Parker, WSBA #30770

Attorneys for Plaintiff

4 DATED: March 20, 2024

/s Aaron Williams, WSBA# 46044

Attorneys for Defendant

7 PURSUANT TO STIPULATION, IT IS SO ORDERED

8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
9 documents, electronically stored information (ESI) or information, whether inadvertent or
10 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
11 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
12 documents, including the attorney-client privilege, attorney work-product protection, or any other
13 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
14 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
15 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
16 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
17 segregation of privileged and/or protected information before production. Information produced
18 in discovery that is protected as privileged or work product shall be immediately returned to the
19 producing party.

20 DATED this 29th day of March, 2024.

22 

23 MICHELLE L. PETERSON

24 United States Magistrate Judge

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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in
 the case of _____ **[insert formal name of the case and the number and initials
 assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____